

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>ZHAOJIN DAVID KE,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 08-268E</b>
	)	
<b>V.</b>	)	
	)	
<b>EDINBORO UNIVERSITY OF</b>	)	<b>Judge Sean J. McLaughlin</b>
<b>PENNSYLVANIA; FRANK POGUE;</b>	)	
<b>JANET DEAN; TERRY SMITH;</b>	)	
<b>RIVA SHARPLES,</b>	)	
	)	
<b>Defendants.</b>	)	<b>Electronically filed.</b>

**DEFENDANTS' RESPONSE TO PLAINTIFF'S**  
**[Docket # 31] MOTION TO COMPEL EMAILS**

AND NOW, come the defendants, Edinboro University of Pennsylvania, Frank Pogue, Janet Dean, Terry Smith, and Riva Sharples, by their attorneys, Susan H. Malone, Chief Deputy Attorney General, Mariah L. Passarelli, Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and respectfully submit the following response to plaintiff's "Motion for Court Order to Compel the Defendants to Surrender Plaintiff's Complete Emails [Docket # 31]":

1. Plaintiff, Zhaojin David Ke, is currently proceeding in the instant action *pro se*.
2. Most recently, on September 28, 2009, Plaintiff filed a document entitled "Motion for Court Order to Compel the Defendants to Surrender Plaintiff's Complete Emails." (See Docket # 31).
3. The defendants have been directed to respond thereto (see Doc. # 31-2), and this response follows.

4. In the instant motion, Plaintiff complains that the defendants failed and refused to produce all his emails from 2001 through 2005 (with the exception of four emails from 2004). (See Doc. # 31, at ¶ 7).

5. On March 20, 2009, Plaintiff's previous counsel served on defendant Edinboro University a First Request for Production of Documents and Things (RFPD). Request #3 was for "copies of all electronic correspondences within Dr. Ke's personal University e-mail account."

6. On April 22, 2009, Edinboro responded by producing all Plaintiff's emails stored on the University mail server.

7. When Plaintiff's previous counsel questioned the fact that Edinboro had essentially failed to produce any of Plaintiff's emails from 2001 through 2004, undersigned counsel revisited the issue with the University.

8. On October 30, 2007, Edinboro received the same letter from Linda McClelland, counsel for Pennsylvania State System of Higher Education, that Dr. Ke received and which is attached to his motion as Exhibit 3.

9. The letter was forwarded to Dr. Andrew Lawlor, Vice President for Technology and Communication at Edinboro who advised faculty and employees of the litigation and the need for them to preserve electronic files and data.

10. According to Dr. Lawlor, Edinboro has a one (1) month email retention policy that is set up with an automatic over-write, so that new emails coming into the server replace old emails after one (1) month. Dr. Lawlor stated that there is no back-up to the email server.

11. Undersigned counsel, Ms. Malone, communicated this information to Plaintiff's previous counsel by telephone and in a Supplemental Response on August 13, 2009, additionally stating that Plaintiff was free to depose Dr. Lawlor in order to gain a more detailed understanding of the University email system if he so desired.

12. Until the instant motion, Edinboro has received no further communication from Plaintiff, or his previous counsel, on this subject.

13. Dr. Ke's University-owned computer was not confiscated, as he has repeatedly alleged. It remained in the English Department for safekeeping until very recently when it was transferred to the custody of Dr. Lawlor. The University has not tampered with Dr. Ke's computer.

14. In sum, Edinboro has produced to Plaintiff all of his emails it was able to access from the University mail server. If Plaintiff contends that there are missing emails, they are either: 1) Emails which were not saved by Plaintiff and automatically purged from the University mail server after 30 days or 2) emails Plaintiff retained and stored on his local, password-protected account.

15. Plaintiff has absolutely no evidence to support his contention that Edinboro or its counsel are intentionally withholding emails from him. If he would like to expand his request to include retrieval of personal emails which he stored on his local account, Edinboro seeks written authorization from Dr. Ke with his password or further order of court.

WHEREFORE, it is respectfully requested that Plaintiff's [Docket # 31] Motion for Court Order to Compel the Defendants to Surrender Plaintiff's Complete Emails should be denied.

Respectfully submitted,

**Thomas W. Corbett, Jr.**  
Attorney General

BY: /s/ Susan H. Malone  
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Date: October 19, 2009

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	)	
	)	
<b>Defendants.</b>	)	<b>Electronically filed.</b>

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within **Defendants' Response to Plaintiff's [Docket # 31] Motion to Compel Emails** was electronically filed with the Court and served upon the following via first-class mail:

ZHAOJIN DAVID KE  
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PHILADELPHIA, PA 19124

\_\_\_\_\_  
/s/ Mariah L. Passarelli  
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